

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JAYDEN BREWER,

Plaintiff,

v.

YAMAHA MOTOR CORPORATION,  
U.S.A., and YAMAHA MOTOR CO.,  
LTD.,

Defendants.

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CIVIL ACTION NO. 5:20-cv-20-663

**DEFENDANT YAMAHA MOTOR CORPORATION, U.S.A.’S  
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Yamaha Motor Corporation, U.S.A. (“YMUS”) files this Notice of Removal, and hereby removes the above-entitled lawsuit from the 433rd Judicial District Court of Comal County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division.

As grounds for removal, YMUS shows the following:

**COMPLIANCE WITH 28 U.S.C. § 1446(a)**

1. Pursuant to 28 U.S.C. § 1446(a), YMUS includes the following index of matters being filed with this Notice of Removal:

- Exhibit 1:** The state court docket sheet
- Exhibit 2:** Plaintiff’s Original Petition (“Petition”)
- Exhibit 3:** CT Corp. – Service of Process Transmittal to Yamaha Motor Corporation, U.S.A.
- Exhibit 4:** YMUS’s Original Answer

**Exhibit 5:** Yamaha Motor Co., Ltd.’s (“YMC”) Consent to Removal

**THE PARTIES**

2. Plaintiff is a Texas citizen, and no defendant is a Texas citizen. Complete diversity of citizenship has existed from the time Plaintiff filed the underlying state court action on April 28, 2020 until now.

**A. Plaintiff**

3. “Plaintiff, Jayden Brewer, is a citizen of the State of Texas, and resides in Adkins, Bexar County, Texas.” *See* Ex. 2, Petition ¶ 1.

**B. Defendant**

4. Defendant Yamaha Motor Corporation, U.S.A. is a California corporation with its principal place of business in Cypress, California. *See* 28 U.S.C. § 1332(a), (c)(1).

5. Defendant Yamaha Motor Co., Ltd. is a Japanese corporation with its principal place of business in Iwata, Japan. 28 U.S.C. § 1332(a), (c)(1).

**STATE COURT ACTION**

6. YMUS removes the state court action styled *Jayden Brewer v. Yamaha Motor Corporation, U.S.A. & Yamaha Motor Co., Ltd.*, Cause No. C2020-0673-D, in the 433rd Judicial District Court of Comal County, Texas. In this personal injury lawsuit, Plaintiff alleges she was a passenger on a 2018 Yamaha WaveRunner EX Sport (HIN YAMA0715E818) on Canyon Lake in Comal County, Texas when Plaintiff fell off the rear of the watercraft, sustaining severe injuries. Ex. 2, Petition ¶¶ 6-8. Against “Defendant,” Plaintiff asserts strict product liability, negligence, and breach of warranty causes of action. *Id.* ¶¶ 10-45.

## **REMOVAL PURSUANT TO DIVERSITY OF CITIZENSHIP**

7. YMUS removes this action pursuant to 28 U.S.C. § 1441(a). This Court has jurisdiction based on 28 U.S.C. § 1332(a) in that “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States” and “citizens or subjects of a foreign state.”

### **A. Amount in Controversy**

8. “Plaintiff prays for judgment against Defendant, in an amount exceeding \$1,000,000.00.” Ex. 2, Petition § IX.

### **B. Diversity of Citizenship**

9. Plaintiff is a citizen of Texas. No defendant is a Texas citizen. YMUS is a California corporation with its principal place of business in Cypress, California. YMC is a Japanese corporation with its principal place of business in Iwata, Japan. Given the complete diversity of citizenship, this Court has jurisdiction under 28 U.S.C. § 1332(a), and removal is proper under 28 U.S.C. § 1441(a).

## **PROCEDURAL REQUIREMENTS OF REMOVAL**

### **A. Timeliness**

10. This Notice of Removal has been timely filed because thirty days have not elapsed since Plaintiff served YMUS with the Petition on May 15, 2020. Ex. 3. *Cf.* 28 U.S.C. § 1446(b)(1).

11. Additionally, this case is being removed within one year of the commencement of the action, as required under 28 U.S.C. § 1446(c)(1).

**B. Venue**

12. Plaintiff brought this action in the 433rd Judicial District Court of Comal County, Texas—located within the Western District of Texas, San Antonio Division. 28 U.S.C. § 124(d)(4). Accordingly, venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

**C. Compliance with Notice Requirements**

13. Pursuant to 28 U.S.C. § 1446(d), YMUS will promptly give written notice of the filing of this Notice to Plaintiff, as well as promptly file a copy of the Notice of Removal with the clerk for the 433rd Judicial District Court of Comal County, Texas.

**D. Filing Fee**

14. A filing fee of \$400 has been tendered to the Clerk of the United States District Court for the Western District of Texas, San Antonio Division.

**E. Consent to Removal**

15. The consent requirement only applies to “properly joined and served defendants.” 28 U.S.C. § 1446(b)(2)(A). “District courts in this circuit generally hold that ‘joinder in or consent to the removal petition must be accomplished by only those defendants: (1) who have been served; and, (2) whom the removing defendant(s) actually knew or should have known had been served.’” *Conner v. Juarez*, No. SA:15-CV-416-DAE, 2015 WL 4876530, at \*7 (W.D. Tex. Aug. 13, 2015) (Ezra, J.) (quoting *Milstead Supply Co. v. Casualty Ins. Co.*, 797 F. Supp. 569, 573 (W.D. Tex. 1992)). YMUS is not required to obtain YMC’s consent because YMC has not been properly served in

accordance with the Hague convention. Nevertheless, YMC consents to the removal.  
Ex. 4.

**F. Other Filings**

16. Pursuant to Federal Rule of Civil Procedure 7.1, YMUS has prepared and will file separately a corporate disclosure statement.

**G. Jury Demand**

17. Plaintiff and YMUS previously demanded a jury trial in state court. Ex. 2, Petition ¶ 52; Ex. 4, Answer ¶ 30. *Cf.* Fed. R. Civ. P. 81(c)(3)(A).

**H. Request for Leave to Amend**

18. In the event this Court subsequently identifies a defect in this Notice of Removal, YMUS respectfully requests the Court grant YMUS leave to amend this Notice and cure the defect. *See, e.g., Silva v. Degs Wind I, LLC*, No. CV 1:13-247, 2015 WL 12743775, at \*2-3 (S.D. Tex. Jan. 29, 2015); *Bailon v. Landstar Ranger, Inc.*, 3:16-CV-1022-L, 2016 WL 6565950, at \*4 (N.D. Tex. Nov. 3, 2016) (citing *In re Allstate Ins. Co.*, 8 F.3d 219, 221 & n.4 (5th Cir. 1993)) (procedural defects may be cured by the filing of an amended notice of removal); *Lafayette City-Parish Consol. Government v. Chain Elec. Co.*, No. 11-1247, 2011 WL 4499589, at \*7 (W.D. La. Sept. 23, 2011) (explaining “defendants may freely amend the notice of removal required by section 1446(b).”).

**CONCLUSION**

Based on the foregoing, YMUS removes this case to this Court. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required under 28 U.S.C. § 1446(a).

Respectfully submitted and signed pursuant to  
Federal Rule of Civil Procedure 11,

By: /s/ Jeffrey S. Hawkins  
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ATTORNEYS FOR DEFENDANT,  
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### **CERTIFICATE OF SERVICE**

On the 3rd day of June, 2020, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the following counsel of record electronically and/or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

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